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7 HENRICKSON; DORIT MARCKS; and  
8 ILAN MARCKS

9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**

12 JUDITH SILVER, *et al.*,  
13 Plaintiffs,

14 vs.

15 BASIL AND ELISE GOULANDRIS  
16 FOUNDATION, a Greece non-profit  
17 organization of unknown form; *et al.*,  
18 Defendants.

Case No. 3:22-cv-08914-RFL

**PLAINTIFFS' THIRD STATEMENT OF  
RECENT DECISION RE: MOTION TO  
DISMISS [ECF No. 50]**

Hearing Date: February 6, 2024

Time: 10:00 a.m.

Place: Courtroom 15

Hon. RITA F. LIN

1 Plaintiffs respectfully submit a third recent judicial decision for the Court’s consideration  
 2 in connection with the motion by The Met (ECF No. 50) requesting to dismiss the First  
 3 Amended Complaint (the “FAC,” ECF No. 47). *See Cassirer v. Thyssen-Bornemisza Collection*  
 4 *Found.*, --- F.4th ---, 2024 U.S. App. LEXIS 561 (9th Cir. 2024) [hereinafter *Cassirer VII*].

5 *Cassirer VII* applied California’s three-step test for resolving a disputed choice of law.  
 6 *See id.* at \*16. At the “comparative impairment” step, “we are directed to measure the interests  
 7 of each jurisdiction based on ‘the circumstances of the present case’—the facts of this *particular*  
 8 dispute—not the jurisdiction’s general policy goals expressed in the laws implicated.” *Id.* at \*22  
 9 (quoting *McCann v. Foster Wheeler*, 225 P.3d 516, 534 (Cal. 2010)). “[There], as in *McCann*,  
 10 California’s governmental interest rests solely on the fortuity that Claude Cassirer moved to  
 11 California in 1980, at a time when the Cassirer family believed the Painting had been lost or  
 12 destroyed.” *Id.* at \*34. The impairment of California’s interests was therefore comparatively  
 13 less, because the plaintiff’s move to California was “a fact over which, as in *McCann*, the  
 14 defendant has ‘no way of knowing or controlling[.]’ ” *See id.* at \*36 (quoting 225 P.3d at 535).

15 The *Cassirer VII* decision relates to The Met’s contention that New York rather than  
 16 California law should determine the FAC’s claim for restitution of the unjust proceeds from its  
 17 purported sale of Hedwig Stern’s stolen van Gogh. *See* ECF No. 50 at 19-21. The FAC does not  
 18 allege that this transaction “or series of transactions” (*see* ECF No. 47, ¶ 1) occurred in New  
 19 York. But in the event of a true conflict with California law, *Cassirer VII* would be relevant in  
 20 contrasting the facts of that particular case with the circumstances of the present one. In  
 21 *Cassirer VII* itself, the comparative impairment analysis relied upon the facts as found at trial.  
 22 *See* 2024 U.S. App. LEXIS 561 at \*14 (“an extensive bench trial”).

23  
 24 Respectfully submitted,

25 Dated: January 11, 2024

**KOHN LAW GROUP, INC.**

26 By: /s/ Robert E. Kohn  
 27 Robert E. Kohn

28 Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I certify that on January 11, 2024, I electronically filed the foregoing document and its attachments using the Court's CM/ECF system. All other participants in this action are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

Dated: January 11, 2024

**KOHN LAW GROUP, INC.**

By: /s/ Robert E. Kohn  
Robert E. Kohn

Counsel for Plaintiffs